Teledyne Specialty Equipment Landis Machine Company *and* International Association of Machinists and Aerospace Workers, Local Lodge 2530, District Lodge 98, AFL–CIO. Case 5–CA–25489

March 19, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

On October 28, 1996, Administrative Law Judge Michael O. Miller issued the attached decision. The General Counsel and the Charging Party Union filed exceptions and supporting briefs, and the Respondent filed cross-exceptions and a brief both in support of its cross-exceptions and in answer to the General Counsel's and the Union's exceptions. Subsequently, the General Counsel and the Union filed briefs in answer to the Respondent's cross-exceptions and in reply to the Respondent's answering brief, and the Respondent filed a brief in reply to the General Counsel's and the Union's answering briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the judge's rulings, findings, and conclusions as set forth below,[1] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Stefan Marculewicz, Esq., for the General Counsel.
Peter D. Post, Esq. (Reed, Smith Shaw & McClay), for the Respondent.
William Rudis, Grand Lodge Representative, for the Charging Party.

DECISION

STATEMENT OF THE CASE

MICHAEL O. MILLER, Administrative Law Judge. This case was tried in York, Pennsylvania, on August 26, 1996, based on a charge filed by the International Association of Machinists and Aerospace Workers, Local Lodge 2530, District Lodge 98, AFL–CIO (the Union) on July 13, 1995, and a complaint and notice of hearing which was issued on October 25, 1995, by the Regional Director for Region 5 of the National Labor Relations Board (the Board). The complaint alleges that Teledyne Specialty Equipment Landis Machine Company (the Respondent or TSE) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by repudiating and refusing to sign an agreement reached in collective bargaining. The Respondent's timely filed answer denies the commission of any unfair labor practices.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a division of Teledyne Industries, Inc., a wholly owned subsidiary of Teledyne, Inc., a Delaware corporation with an office and place of business in Waynesboro, Pennsylvania, is engaged in the business of machining and assembling thread chasers. During the 12 months prior to the issuance of the complaint, the Respondent purchased and received at its Waynesboro facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Pennsylvania. The complaint alleges, the Respondent admits, and I find and conclude that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

A. Background

The Respondent and the Union have had a collective-bargaining relationship since 1974. There are about 210 employees in the admittedly appropriate production and maintenance unit.[1]

The term of the last collective-bargaining agreement was June 30, 1992, through June 30, 1995. Planning for negotiations began in January 1995[2] and those negotiations commenced about mid-April. They were conducted in a format identified as "task team bargaining," wherein the issues were addressed in a problem solving context, involving individuals outside of a traditional negotiating committee, rather than in a strict offer/rejection/counteroffer/acceptance format. The principal significance of the task team bargaining format to the issues here was the understanding that some issues might not be resolved before the termination of the old agreement but would be held over for continuing discussions and negotiation.

The principals involved in the bargaining were Brian Morrow, the Respondent's newly hired manager of human relations, Thomas Boger, the Union's directing business agent, Steven Bradburn, president of the local union, and Dr. Stephen Holoviak, professor of industrial relations in human resource management. Holoviak developed task team bargaining and served as a facilitator in these negotiations.

B. The Bargaining

Morrow came into the bargaining on being hired by TSE on May 1. It was his understanding that he had full authority to bargain and reach agreement on the Respondent's behalf and he so informed the Union's representatives. Boger's authority was somewhat more circumscribed; the parties were aware, at all times, that any agreement reached in negotiations was subject to ratification by the unit employees, as required by the Union's

[1] We affirm the judge's determination that the Respondent timely withdrew from the parties' May 30, 1995 tentative agreement based on his "contract-ratification" analysis. We find it unnecessary to consider his alternative finding that a mutual mistake concerning a material fact also permitted the Respondent lawfully to withdraw from the tentative agreement.

[1] The complaint spells out the lengthy unit description in detail. It need not be duplicated here.

[2] All dates hereinafter are 1995 unless otherwise specified.

constitution.[3] Throughout these negotiations, TSE sought a no-strike pledge from the Union. Consistently, Boger told Morrow that he did not have the authority to grant such a pledge, that the authority to do so rested with the employees. Boger, however, also assured Morrow that he had never failed to secure ratification when he had recommended it.[4]

Morrow came into the negotiations with a mandate to reach agreement at no additional cost to the Employer. Boger's goal was to secure a wage increase which would not be eaten up by increased costs in the employees' share of health insurance premiums.

The parties reached at least a tentative agreement on what is termed "an economic package" on May 30. Significant raises and the ultimate elimination of employee contributions for health insurance were achieved, at what appeared to be a modest overall cost to the Employer, by agreeing to changes in the health insurance deductibles from $50 to $250 per year, and by eliminating paid breaks. The agreement also provided for the elimination of a two-tier wage and vacation structure and allowed for 5 unpaid days of sick leave. Specifically left for later determination were the pension program and the elimination and replacement of the current incentive program. It was further provided that the "Pension program will not be a work stoppage issue" and that discussion of outstanding issues and language would continue utilizing task team bargaining "past or beyond June 30, 1995 without a work stoppage." Everyone was pleased with what they thought they had achieved and hands were shaken with mutual congratulations. Boger assured management that he would secure ratification and the bargaining committee members all indicated their support for the agreement.

The Union had planned to take the Employer's proposal to a ratification meeting within a few days of the May 30 agreement. However, they agreed to delay it, on Morrow's request, so that Morrow could "run the numbers" by the corporate offices in Worthington, Ohio.[5]

C. The Deal Falls Apart

Morrow went to Worthington, Ohio, on June 2 and reviewed the economic package with the authorities there. It appeared that the new agreement would cost the Respondent about $100,000 over its term; this was close enough to Morrow's goal that he felt that the agreement "was a go" and he was able to tell Bradburn that there appeared to be no problems. At Bradburn's request, Morrow prepared an outline of the agreement which he sent to Boger through Bradburn under date of June 6. That document described the "tentative agreement" which the parties had reached. It sought Boger's signature as "confirm[ing] said tentative agreement without a work stoppage past or beyond June 30, 1995."[6]

Bradburn brought Morrow's "tentative agreement" to Boger about June 7. Boger's signature, dated June 8, appears on one copy. It was never returned to Morrow.[7]

While Morrow had been in Worthington, Chuck Topping, Respondent's president, asked him to prepare a cost analysis of the agreement. That analysis projected savings of $264,000 in the first year, $168,000 in the second and $72,000 in the third contract year, based upon an increase in the health insurance deductible from $50 to $250.[8] It was premised upon an understanding that Respondent's annual share of the insurance costs was $892,000 and the employees' contribution was $175,000. In fact, however, the *total* cost of the insurance was $892,000 per year, including the employees' contributions. This error resulted in a substantial overstatement in the savings to be achieved.

On June 9, Morrow was alerted that personnel in Respondent's Los Angeles and Worthington offices were questioning his projected savings. Specifically, they questioned how the insurance costs for a 210 employee enterprise could exceed $1,100,000 per year. Morrow was instructed to "sit tight" until they could get back to him. Thereafter, Morrow reviewed the figures and discovered the error. Further discussions with the Los Angeles office continued; he informed those superiors that he had sent the Union a tentative agreement, that he had not yet received a signed copy back from the Union and that the Union had a ratification meeting scheduled for June 14.

On June 14, the company and union committees met to discuss other issues which remained open. Although the meeting lasted until noon, Morrow left about after about an hour to engage in conference calls with his superiors in Los Angeles and Worthington. He did not advise Boger of the problem inasmuch as he did not know what course of action he would have to take; neither did he assure Boger that the agreement had been approved in Worthington.[9]

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[3] Holoviak understood that Morrow was subject to the overriding authority of others in the corporate hierarchy and that the Union's constitution required ratification. In setting up the ground rules for these negotiations, he insisted that the negotiators have the authority to agree, subject to such overriding authority.

[4] Under the Union's procedures, ratification required a simple majority of those voting. If that vote failed to secure a majority, however, the agreement was automatically accepted if a strike vote, requiring support by two-thirds, failed.

[5] The Tr. at p. 68, LL. 19–21, relates, according to Boger, that when Boger questioned why Morrow wanted to have someone else review the numbers when he had claimed to have authority to negotiate a contract, Morrow said that "he just wants to run the numbers by them to make sure. There is no problem." The sentence is more appropriately punctuated as, "He just wants to run the numbers by them to make sure there is no problem."

[6] The tentative agreement which Morrow had prepared inadvertently omitted references to elimination of a two-tiered vacation schedule and a $5 prescription card. He agreed to rectify the former in a telephone call with Bradburn; the latter was not discovered until the day of the scheduled ratification vote.

[7] In so finding, I credit Morrow's denial that he ever received a copy over Boger's claim that he gave a copy to Morrow at the June 14 meeting. I note that Morrow credibly testified that he left that meeting after only 1 hour while Boger claimed that he "may" have delivered the document to him at the conclusion of the meeting. I also note Boger's less than credible testimony concerning when he signed that "tentative agreement," his failure to respond to a letter from Plant Manager Tebbutt concerning his failure to sign the tentative agreement and his omission, from both his letter to the International setting out the facts in preparation for the filing of a charge and from his NLRB investigative affidavit, of any reference to having signed or returned this tentative agreement.

[8] The expected savings decreased in each year because of an annual decrease in the percentage of employee contribution. It also showed expected savings of nearly $700,000 by eliminating the paid breaks ($561,000), incentives ($54,000) and a portion of the third shift ($84,000).

[9] In reaching this conclusion, I credit Morrow, finding it inconceivable that he would have told Boger that Worthington liked the agreement and that there were no problems given the communications he had had concerning the error.

At 1 p.m., Morrow was instructed to withdraw the offer. He immediately communicated that to Boger who was, at that moment, preparing for the ratification vote. He explained that there had been a "huge error in the calculation of the insurance." Neither the Union nor the General Counsel disputed at the hearing that such an error had been made.[10]

Boger protested that they were prepared to present the "tentative contract" to the membership and noted that Morrow had assured him both that he had the authority to sign an agreement and that Worthington had okayed the figures.

Boger had redrafted Morrow's "tentative agreement," preparing a document for the membership entitled "Tentative Agreement Upon Ratification of Membership." It included. for employee approval, the no-strike commitments. Notwithstanding Morrow's withdrawal of the proposal, he presented that "tentative agreement" to the membership and it was overwhelmingly ratified. The Respondent confirmed the withdrawal of its proposal by letter dated June 14. It sought an immediate return to the bargaining table.

D. Analysis and Conclusions

No one here disputes the principle that a party to collective bargaining is obligated to execute "a written contract incorporating any agreement if requested by [the other] party." 29 U.S.C. Sec 158(d). See also *NLRB v. Strong Roofing,* 393 U.S. 357 (1967), and *H.J. Heinz Co., v. NLRB,* 311 U.S. 514 (1941). Preliminary to the creation of such an obligation, however, must be a finding of the requisite "meeting of the minds" essential to a binding agreement. *Henry Bierce Co.* 307 NLRB 622, 629 (1992).[11] While the record is sparse as to the precise details of the negotiations, it is clear that both parties sought savings in the cost of the health insurance as a means of funding other benefits. And, both parties thought they had achieved such savings by increasing the deductibles. That conclusion was premised on a mistaken view of the Employer's cost of that insurance. They then applied the savings supposedly achieved to those other benefits. In fact, the savings they thought existed were illusory. There was, I find, a mutual mistake as to a material fact which renders what would otherwise be an agreement voidable at the option of the party prejudiced by that mistake. *Mary Bridge Children's Hospital*, 305 NLRB 570, 572–573 (1991).[12]

Assuming that there was an agreement, there remains the issue of whether the Respondent timely withdrew its offer so as to prevent imposition on it of an obligation to sign on the Union's demand.[13] The Respondent contends that, under the facts of this case, ratification was a condition precedent to contract and that its withdrawal of the offer before ratification was therefore timely, citing the *Sunderland, Inc.*[14] case and its progeny. Counsel for the General Counsel disputes this contention, relying on *Williamhouse-Regency of Delaware, Inc.,* and *Sacramento Union.*[15] While the matter is not free from doubt, I find Respondents' argument the more persuasive.

In *Sunderland,* the Board, in footnote 1, stated:

> We agree with the Trial Examiner that those cases in which the Board has found that ratification is a gratuitous process which union negotiators impose upon themselves . . . are not applicable here. The record in this proceeding discloses that during bargaining negotiations, Riviera, Respondents' attorney and bargaining agent, sought specifically to determine whether the Union's representatives had the final authority to accept or reject a contract, and insisted that they come to bargaining armed with such authority. The union negotiators, in turn took this question back to the union membership but, upon a vote taken among the members, they were given only the authority to take Respondent's best offer and bring it back to the membership for ratification. It is thus clear that the Union negotiators did not have final authority to accept or reject a contract offer and, as the Trial Examiner found, ratification was a precondition of arrival at a binding agreement.

Therein, the complaint was dismissed because ratification did not occur before the employer's withdrawal of its offer. In the instant case, ratification was expressly required by the Union's constitution, a fact which was known to all parties, and the Union's bargaining representative had expressly refused to agree to the Employer's repeated demands for a no-strike agreement because he did not have the authority to independently make such an agreement. The "tentative agreement" which the Respondent drafted included, in two separate paragraphs, no-strike commitments requiring membership approval. Employee ratification was thus a condition precedent to agreement to such proposals.[16]

In *Sacramento Union*, relied on by the General Counsel, although ratification was required by the union's constitution, "ratification as such was not established as a condition" and was never proposed as an express term of the agreement. (Supra at 488.) Instead, there were employer-imposed requirements

[10] On brief, the counsel for the General Counsel asserted, for the first time, that the claim of a costing error was other than "legitimate" and that the claim that the Respondent had discovered such an error "was developed only to put a good faith spin, [sic] on an otherwise bad faith intent." As both the Respondent's counsel and I noted at hearing, without contradiction, this complaint did not allege surface bargaining. I find that the error was real, inadvertent, and substantial.

[11] This issue, I find, was at least implicitly raised in the Respondent's brief.

[12] In *Mary Bridge,* the parties intended to utilize a night-shift bonus formula from another contract. The employer provided the union with a document for ratification which incorporated an erroneous formulation; both parties, however, believed it to be accurate. The error was not discovered until after the contract was executed, at which time the employer sought to reform that agreement to the parties' stated intent. When the union refused, the employer refused to comply with a demand that it apply the agreement erroneously reached. The Board, affirming the decision of the administrative law judge, found no violation, even though the mistake was, as is apparently the case here, the result of the employer's negligence.

[13] The complaint in this proceeding does not place before me any issue concerning the adequacy of Morrow's bargaining authority or the question of whether the Respondent's assertion of a mistake and its attempted withdrawal was subjective bad faith. Neither must I reach the issue, raised by the Respondent on brief, of whether there was "a *complete* labor agreement which the Company refused to sign." The parties had agreed, as part of the task team bargaining concept, that some issues would be left open for later resolution or continuous discussion. Their bargaining contemplated execution of a less-than-complete package, if agreement was reached, with additional bargaining thereafter.

[14] 194 NLRB 118 (1971).

[15] 297 NLRB 199 fn. 5 (1989), and 296 NLRB 477 (1989), respectively.

[16] In this regard, the instant case is similar to *Good GMC, Inc.,* 267 NLRB 583 (1983), wherein the parties had agreed, as one of the ground rules, that ratification would be subject to ratification by both the employer and the membership.

that the union's committee recommend ratification to the membership and that ratification occur before a specified date. The employer's purported withdrawal came after the committee had agreed to recommend the contract and before it could satisfy the latter condition. As the judge noted, "under these circumstances . . . the Union was at liberty to change its position on ratification and conclude a signed agreement with Respondent." Based thereon, I find *Sacramento Union*, though close, to be distinguishable. I note that the Board therein, at footnote 2, disclaimed the suggestion that "the Board will never treat ratification as the equivalent of an acceptance that must occur before a binding contract is created."[17]

Finally, I note that the parties here have had a long and successful, if hard fought, bargaining relationship. To burden the Employer with the results of this honest mistake would unjustly benefit the employees and potentially poison the prospects for a workable relationship in the future. The appropriate course here is for the parties to return to the bargaining table and work out a mutually acceptable compromise based on accurate information.

[17] *Williamhouse-Regency of Delaware,* cited above, is also distinguishable. There, the employer never explicitly withdrew is offer or told the union that it had expired.

CONCLUSION OF LAW

The Respondent has not violated the Act in any manner alleged in the complaint.

ORDER[18]

The complaint is dismissed in its entirety.

[18] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.